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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

SEP 12 1994

In the Matter of
Equal Access and Interconnection
Obligations Pertaining to
Commercial Mobile Radio Services

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CC Docket No. 94-54
RM-8012

COMMENTS OF LDDS COMMUNICATIONS, INC.

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SUMMARY

This proceeding has the potential to produce substantial benefits for the rapidly-growing number of consumers that rely on wireless telecommunications services for business, personal, and safety reasons. Experience demonstrates that, absent equal access requirements such as those in the MFJ, CMRS vendors will deny consumers nondiscriminatory access to the long distance carrier of their choosing. As a result, consumers pay higher prices and enjoy fewer service options.

In the Notice, the Commission proposes to address this market problem by adopting equal access requirements for CMRS providers. LDDS strongly supports extension of equal access rules to wireless markets to bring the benefits of customer choice, service diversity, and network connectivity to mobile users.

The justification for Commission action is clear. Abundant evidence demonstrates that wireless markets, particularly the core cellular market, are not fully competitive. In the absence of an equal access requirement, cellular licensees have been able to use their market power to reap supracompetitive prices for both local and long distance mobile service. But equal access rules will be necessary even if meaningful facilities-based wireless competition develops in the local market. Each local mobile service provider still will control access to its own respective customer base. As a result, rules which require nondiscriminatory equal access still will be required to guarantee customers freedom of choice.

Commission action will permit wireless users to enjoy the same benefits that have resulted from equal access for landline services. Equal access was a fundamental precondition for the explosive growth of competitive providers in the landline long distance market. By requiring CMRS equal access, the

Commission can facilitate robust competition for wireless interexchange service, resulting in more choices and lower prices for end users.

Specifically, CMRS providers should be required to provide access to IXC's on an equal and nondiscriminatory basis, and in particular prohibited from discriminating in favor of their own interexchange services, if any. Implementation procedures for CMRS equal access should be based on the policies developed in the landline arena. LDDS recommends that the Commission allow a 21-month phase-in period, commensurate with the period established by the Justice Department for implementation of equal access by McCaw. The Commission should require CMRS providers to offer 1+ presubscription pursuant to a balloting process. Unbundling of local and long distance service should be mandated to protect against discrimination in the terms and conditions of service. LATA boundaries, as modified by any waivers for wireless service under the MFJ, should be used to define local service areas, at least pending further action to increase competition for intraLATA toll services.

In addition, LDDS urges the Commission to re-affirm its policy requiring unlimited resale of cellular service and extend that policy to other CMRS services. The resale obligation is a central part of a common carrier's responsibilities. By mandating CMRS resale, the Commission can encourage additional competitive entry and discourage discrimination by facilities-based providers. However, the Commission must also continue to monitor the mobile market to ensure that meaningful resale competition is actually permitted to develop.

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LDDS Communications, Inc. d/b/a LDDSMetromedia ("LDDS"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rule Making and Notice of Inquiry in the above-captioned proceeding, FCC 94-145 (released July 1, 1994) ("Notice"). LDDS strongly supports the Commission's proposal to extend the benefits of equal access into the rapidly-expanding wireless telecommunications market.

INTRODUCTION

This proceeding is critical to the further development of wireless services. In the landline market, equal access was the central factor in the emergence of robust interexchange competition. The underlying rationale for equal access was and is simple and compelling: a local exchange service company should not exercise control over the long distance choices available to its customers by virtue of its provision of the local loop. The exchange carrier should not foreclose customers from accessing competing long distance carriers on an equal basis, either directly (by denying interconnection), or indirectly (through discrimination in access price or quality). Additional competitive concerns are raised when the local

exchange company itself offers long distance, for then the LEC's incentives to discriminate in its own favor are intense.

This rationale applies with the same force in the wireless market. Incentives to discriminate are the same whether the local service vendor happens to provide service over wire or radio. Equal access rules are necessary to give wireless service users freedom of choice. Otherwise, wireless service providers, which control the only means of access to their customers, 1/ will continue to deny those customers the right to select their preferred long distance carrier on a nondiscriminatory basis.

The importance of equal access is highlighted now by the focus of policy makers on the development of the information superhighway. That vision cannot be realized if there are arbitrary limits on a user's ability to access the full range of available services. Nor can the economic benefits that have been predicted be achieved if the entrepreneurs who develop innovative information transmission and processing services are unable to access prospective customers. Full network connectivity is essential if we are to avoid creating barriers to robust use of the vast investment in our nation's information infrastructure.

Wireless services play a vital and ever-increasing role in our society. In the cellular market alone, the growth in demand for mobile services has been phenomenal. The Cellular Telecommunications Industry Association has reported that since 1987 the number of cellular subscribers has increased from 1 million to

1/ See Proposed Final Judgment and Competitive Impact Statement; United States of America v. AT&T Corp. and McCaw Cellular Communications, Inc., 59 Fed. Reg. 44158, 44168 (Aug. 26, 1994) ("Cellular subscribers can only access interexchange service providers that have exchange access to that cellular system.") (hereinafter, "AT&T/McCaw Competitive Impact Statement").

nearly 17 million. ^{2/} Cellular equipment prices have dropped as a result, bringing mobile services within reach for even more prospective users. Advances in digital technology promise to substantially increase system capacity and service quality. The increasing numbers of users who depend on wireless services must be given the same rights of access to the long distance service providers of their choice that landline customers now enjoy.

LDDS focuses here on cellular, the largest wireless market, and its most likely competitors, PCS and ESMR. In these services the customer benefits of equal access overwhelmingly outweigh implementation costs. We commend the Commission for recognizing that equal access will continue to be critical to the national goal of a vibrant and actively competitive "network of networks."

I. COMMISSION ACTION IS NECESSARY BECAUSE OF THE INHERENT MARKET POWER THAT CMRS PROVIDERS HOLD OVER ACCESS TO THEIR LOCAL CUSTOMERS.

Commission action mandating equal access is clearly justified under the applicable public interest standard. As the Commission observed in the Notice, past decisions to mandate equal access have relied on the Commission's authority under Section 201 of the Communications Act to order carriers to provide interconnection. The Commission has exercised that authority in cases where it has determined that "the market was not sufficiently competitive to ensure that Commission goals of promoting consumer choice of carrier and competitive service offerings were attained." Notice at ¶ 32.

^{2/} See *Amicus Curiae* Memorandum of the Cellular Telecommunications Industry Association in Support of Generic Wireless Relief, filed in *United States v. Western Elec. Co.*, Civil Action No. 82-0192 (D.D.C. Aug. 8, 1994) at 4.

There can be no real question that this test is satisfied here. As the Department of Justice has recently observed, "cellular systems have substantial market power." 3/ Furthermore, even if additional providers compete more directly with cellular licensees in the future, there still will be a need for equal access requirements because each wireless carrier still will control access by long distance vendors to its respective mobile customer base -- just as multiple LECs in a region control access to their respective landline customer bases.

Equal access only will develop as a result of regulatory requirement, not market forces. As the Commission recognized in the Notice, today in the absence of an equal access obligation, the mobile service provider effectively chooses the IXC, not the end user. Id. at ¶ 36. That IXC is likely to be the mobile vendor's own affiliated service. Without Commission action, in the future wireless providers will continue to deny their customers access to other carriers -- directly, or indirectly through discrimination -- thereby leveraging their control over their mobile customer base into the long distance service market.

A. Substantial Evidence Demonstrates that the Market for Wireless Services Is Not Competitive.

There is ample evidence that wireless services are not fully competitive today. In the core cellular market the duopoly structure protects each licensee from the forces of competition. The Commission itself has previously determined that the record evidence "does not support a conclusion that cellular services are fully competitive." 4/

3/ DOJ Memorandum at 14.

4/ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1467 (1994).

Numerous other policy makers agree with that analysis. The Department of Justice, for example, recently investigated the level of competition in the cellular market as part of its evaluation of the request by the seven Bell companies to enter the wireless long distance market and AT&T's proposed acquisition of McCaw. The Department found that:

With extremely limited exceptions, there are no providers of mobile telephone services other than the two cellular carriers. At the current time, the holders of these cellular licenses . . . exercise market power in the provision of cellular service. These duopolies are characterized by rapidly growing demand and minimal price competition, resulting in high margins to cellular carriers. 5/

The Department concluded that BOC cellular operations were able to sustain supracompetitive prices and retain market share despite their assertions that their equal access obligations hampered them competitively. 6/ In fact, in documents submitted by the Department the BOCs acknowledged that the duopoly system has produced only a "limited rivalry" that permits supracompetitive profit margins. 7/ The California Public Utilities Commission ("CPUC") has also done a recent assessment of cellular competition. 8/ The CPUC found that "cellular carriers are

5/ AT&T/McCaw Competitive Impact Statement, 59 Fed. Reg. at 44167.

6/ Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers, filed in United States v. Western Elec. Co., Civil Action No. 82-0192 (D.D.C. July 25, 1994) at 14-19 (hereinafter, "DOJ Memorandum").

7/ Id. at 15 (quoting Southwestern Bell memorandum).

8/ Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications, I.93-12-007 (California Pub. Util. Comm'n, Aug. 3, 1994) (hereinafter, "CPUC Mobile Investigation").

operating largely free of competitive challenges within the current mobile services industry." Id. at 36. 9/

This lack of competition in the market for local wireless services in turn harms competition for the interexchange portion of wireless services, as the Commission recognized. See Notice at ¶ 31. Carriers that are not subject to the MFJ's equal access requirements do not permit their customers to choose the long distance provider that will carry their calls. 10/ The result is that IXCs' ability to compete for the business of wireless customers is sharply limited -- and so is free customer choice.

LDDS' experience demonstrates this problem. Despite its strong presence in the Southeast, where there are numerous McCaw cellular systems, LDDS has been unable to gain any share of McCaw's long distance business. Apparently other IXCs also have been unable to penetrate McCaw's market. Information supplied to the Department of Justice in connection with AT&T's proposed acquisition of McCaw confirms that McCaw currently uses its own facilities or resells AT&T to provide long distance service in the markets where it is not partnered with a BOC. 11/

Cellular carriers' market power translates directly into concentration in the market for wireless long distance service. This, in turn, means higher prices for consumers. As the Department of Justice recently observed:

9 California is one of eight states that have filed petitions to retain authority over intrastate mobile service rates due to the lack of effective competition in wireless markets. See Notice, 59 Fed. Reg. 42595 (August 18, 1994).

10/ DOJ Memorandum at 19-20 & n.27.

11/ See Complaint, United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civ. Action No. I:94-CV01555 (D.D.C. July 15, 1994) at 9.

[T]he market power of each cellular duopolist appears to be sufficient to permit supracompetitive pricing of cellular service; allowing a cellular carrier to provide interexchange service on an exclusive basis . . . permit[s] that carrier to charge supracompetitive pricing for interexchange services as well. 12/

Nor is this situation likely to change in the near future. Again, there is virtually unanimous agreement among the Justice Department and other policy makers that cellular carriers will not face significant competition in the near term. As the Department of Justice has observed:

As yet, there are no SMR or PCS providers of wireless telephony generally available today. It is, of course, possible that at some point these new technologies will offer wireless service in competition with today's cellular duopolists. When it will happen and what effect, if any, it will have on competition in the market for cellular telephone service is now unknown. 13/

The CPUC also evaluated the prospects of additional competition from PCS and SMR and determined that there were significant impediments that would prevent either service from becoming a viable substitute for cellular. 14/ Perhaps at some point in the future the current market power of cellular companies will be eroded and customers will face cost-based local service as a result of market pressures. But the Commission should adopt rules in this proceeding based on the market that exists today, not the market that may exist at some unknown time in the future.

12/ DOJ Memorandum at 3.

13/ Id. at 24-25.

14/ CPUC Mobile Investigation at 33.

B. Even If Local Service Competition Develops, Equal Access Requirements Will Be Necessary Because CMRS Providers Still Will Control Access to Their Wireless Customers.

In any event, to focus on the number of facilities-based mobile providers in a market is to focus on a red herring. Even if competition for local wireless service does develop, that will not obviate the need for equal access requirements in the mobile services market. Each local wireless carrier still will retain control over access to its respective customer base. As a result, the Commission still must have equal access rules in place to protect the right of wireless users to reach any long distance service provider on a non-discriminatory basis. The Commission's concern for promoting customer choice of IXC's and competition in the wireless interexchange market (Notice at ¶¶ 36-38) are not diminished when the number of wireless providers goes from two to three, four or five. The same structural problems remain: without equal access, the mobile carrier, not the end user, has the power to choose the IXC (directly, or indirectly through discrimination), and customers lack free access to the IXC of their choice.

In short, the Commission must recognize the fundamental fact that local mobile service competition is not the same as mobile exchange access competition. Even if an end user has a choice between two or more providers for its wireless "loop," an IXC does not have a similar competitive choice regarding how it reaches that customer. The IXC must access the customer over the wireless loop chosen by the customer for its local service; if the IXC cannot do so on a non-discriminatory basis, then it cannot serve that customer's wireless long distance needs at all.

As a result, from the perspective of an IXC the wireless "loop" represents an essential bottleneck facility. Unless an IXC can interconnect on reasonable, nondiscriminatory terms with all the wireless providers in a given area,

it cannot offer services to the total wireless customer base in that market.

Similarly, in order to terminate calls to all wireless users, the IXC must have non-discriminatory access to every mobile operator. The situation is comparable to the division of the landline exchange customer base in a given region among the LECs that operate in that region. Clearly each LEC has bottleneck control over its local customer base for access purposes. Similarly, each mobile provider in a region has bottleneck power over access to its respective wireless customers.

Furthermore, it is clear that the Commission cannot rely on competitive forces to guarantee wireless users equal access to all IXCs. For example, even though the BOCs have been required to provide equal access with respect to their cellular operations, the BOCs' cellular competitors have not offered that option to their customers. ^{15/} A Commission mandate is necessary to extend the benefits of choice to all wireless users -- not just end users of the BOCs (and now AT&T/McCaw).

Put simply, customers should have as many competitive choices for their long distance carrier when placing a mobile call as when making a landline call. Yet the incentives of a mobile carrier to discriminate in favor of itself or a preferred long distance vendor are intense -- so strong that in the case of the BOCs the MFJ prohibits them from providing interLATA mobile services even though they are required by the Decree to provide equal access. Other mobile carriers should at least be subject to the equal access obligations proposed in the Notice here. Equal access is a fundamental obligation of a common carrier under Title II of the Act, and, as discussed below, central to a fully competitive industry structure for consumers in the future.

^{15/} DOJ Memorandum at 19-20.

II. EXTENDING EQUAL ACCESS REQUIREMENTS TO CMRS PROVIDERS WILL BENEFIT WIRELESS CUSTOMERS.

The Notice recognizes that the same public interest goals that led the Commission to require equal access in the landline telephone market support extension of equal access requirements to CMRS providers. Landline equal access has been the foundation for development of competition in the long distance market, producing more service options and lower prices. Users who depend on mobile services are entitled to the same benefits. Because LDDS believes that these benefits should not be the subject of any dispute, we mention them only briefly here.

A. Equal Access Requirements Were Central to the Development of a Robustly Competitive Market for Wireline Long Distance.

Equal access requirements played a fundamental role in advancing customer welfare in the wireline telecommunications market. The equal access provisions of the MFJ are essential elements of the decree's protections against the anti-competitive abuses that led to divestiture. The Department of Justice has stated that:

The structure of the Decree rests on equal access. AT&T's discrimination against competing long distance carriers formed the basis of the antitrust violation, and preventing discrimination by the exchange access provider was and is the key to allowing competitive long distance markets to develop. 16/

16/ DOJ Memorandum at 29, citing United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 165 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

Recognizing the importance of these provisions for access to all LECs, the Commission extended equal access requirements by its own further order. 17/

These actions were critical prerequisites to the emergence of competition in the long distance industry. Equal access for the first time allowed IXCs to compete for end users' business based on long distance service quality and price, without the competitive impediments of complicated extra-digit dialing patterns or massive discrimination in access pricing. 18/

As a result of that competition, customers have received more diverse, higher quality services at lower prices. The Commission has found that:

In the interstate telecommunications market, the prod of competition has led to greater customer choice, the more efficient provision of products and services desired by customers, and a more rapid deployment of advanced telecommunications technologies. For example, competition in the provision of interstate long-distance service has led to sharply reduced rates, a larger variety of service options, and more rapid deployment of new technologies such as fiber optics and digital switching. 19/

17/ See MTS and WATS Market Structure, 94 FCC 2d 292, 297 (1983) ("The object of the MFJ under the antitrust laws is creation of a competitive telecommunications marketplace nationwide, which is complementary to our mandate under the Act to ensure the availability of rapid, efficient communications with adequate facilities at reasonable charges, also on a nationwide basis.").

18/ LDDS would quickly add that LEC access rates still contain unreasonable discrimination in favor of AT&T. Indeed, LEC discrimination has become a more serious problem with the replacement of the "equal charge" rule with new transport pricing that does not require LECs to recover overhead and other common costs equally from all access customers. That said, we recognize that problems in the regulation of landline access rates are not the issue here. The fact that LECs may not be providing fully equal access does not make that core policy requirement any less important.

19/ Expanded Interconnection with Local Telephone Company Facilities, 6 FCC Rcd 3259, 3260 (1991).

Because of equal access, landline end users are free to select the long distance provider of their choice and have access to any of the wide variety of services offered by these carriers.

B. The Benefits of Equal Access Are Equally Important in the Wireless Services Market.

Commission action here will extend the advantages of equal access to the growing number of customers who rely on wireless transmission services. As we have discussed above, in the absence of equal access requirements, wireless providers routinely deny their customers the freedom to choose their long distance carriers. This permits these providers to extend their market power over local service into the wireless long distance market.

The Commission is not alone in recognizing the important role that equal access rules should play in the wireless environment. The Department of Justice recently negotiated a proposed consent decree with AT&T and McCaw that, if approved, will extend the benefits of equal access to customers of the largest non-BOC cellular provider. ^{20/} Thus, the Commission's proposal here is consistent with the trend toward expanding the scope of equal access in the mobile services market.

As the Commission recognized in the Notice (§§ 36-39), equal access can bring several important benefits to wireless users.

1. Customer choice

First and most importantly, equal access promotes customer choice by placing the decision concerning what long distance provider to use in the hands of the wireless customer who must pay for that service. This linking of choice and accountability is the key to both competition and enhanced efficiency in the wireless

^{20/} AT&T/McCaw Competitive Impact Statement, 59 Fed. Reg. at 44158.

long distance market. Equal access permits the end user to choose among available service options and pricing plans, selecting the combination of features that best suits his or her needs. 21/

Without equal access, all provisioning decisions are made by the wireless carrier, and users are limited to the few service and pricing options offered by that carrier. This is not to say that a wireless "loop" vendor will necessarily deny interconnection to other long distance companies altogether -- although that is possible. More likely, the wireless firm will discriminate against other IXC's who want to compete to serve its customer base, thereby indirectly reducing the customer's choices by increasing the cost or reducing the efficiency of using those competing carriers. The result for the consumer is the same either way -- less choice and higher prices.

2. Network connectivity

CMRS equal access is also necessary to ensure that wireless users have access to the full panoply of service choices that wireline communications customers enjoy. Nondiscriminatory interconnection among service providers is essential to development of a "network of networks" that will allow all users to take advantage of the complete range of existing and future services.

In its proposals regarding development of the information superhighway, the Administration has emphasized the need to prevent the creation of a class of "information have-nots" who are denied access to the full range of

21/ Customers can combine the service of the local cellular company who best meets their needs with the interexchange services of the long distance company with the most suitable service package.

available services. 22/ Yet in the absence of equal access requirements, that is exactly what will happen to wireless users, who will be limited to the service choices made by their local wireless loop provider.

3. Regulatory parity

Finally, Commission action to impose equal access on CMRS providers will create regulatory parity among competing carriers. Uniform equal access rules will eliminate the inconsistency that exists today between rules governing BOC-affiliated providers (and in the future AT&T/McCaw), who must comply with equal access requirements pursuant to antitrust consent decrees, and non-BOC carriers, who are not subject to those rules. It also will harmonize the treatment of wireline and landline exchange companies to avoid customer confusion. Imposition of consistent equal access rules on all providers will ensure that carriers compete based on service distinctions, not regulatory distinctions.

Together, these benefits clearly outweigh the costs associated with equal access. As discussed below, implementation costs can be minimized by requiring new CMRS licensees to build their systems with an equal access capability and by permitting existing licensees a reasonable time to phase in equal access. Furthermore, the evidence clearly demonstrates that equal access will result in savings for end users. Claims by some CMRS providers that customers today save on long distance charges because of vertical integration (Notice at ¶ 41) cannot be supported. This argument was raised by the BOCs in their attempts to gain authority to provide wireless services without equal access and was flatly

22/ See "Background on the Administration's Telecommunications Policy Reform Initiative" at 1, citing speech by Vice President Gore before the National Press Club, December 21, 1993.

rejected by the Department of Justice. 23/ To the contrary, the Department found that large users in particular pay substantially higher prices for cellular long distance service in the absence of equal access. 24/

III. IMPLEMENTATION ISSUES CAN BE ADDRESSED EASILY.

Using landline equal access as a model, equal access for CMRS providers can be implemented quickly and easily, with a minimum of customer confusion. Of course, the scope of the conversion necessary here is much more limited than when equal access was put in place for landline services. All the BOC-owned and affiliated cellular systems are already subject to equal access rules, and McCaw will be required to convert its systems to equal access under the terms of the consent decree proposed by the Department of Justice. Thus, only non-BOC, non-McCaw systems will be affected by Commission action.

A. The Basic Requirements for CMRS Equal Access Should Mirror Landline Equal Access Rules.

The fundamental requirements of equal access should be the same in both the landline and mobile services markets. CMRS providers must be prohibited from discriminating among interexchange carriers in the rates, terms, and conditions of interconnection. In particular, the Commission should emphasize that CMRS vendors may not discriminate in favor of their own interexchange operations, if any. It is such direct anticompetitive favoritism that is most damaging to consumer choice, and yet the most likely to occur given the strong

23/ DOJ Memorandum at 13.

24/ Id. at 20 n.29 ("Dow Chemical pays 25 to 50 percent more for cellular long distance than for landline long distance because its cellular carrier does not provide equal access.").

incentives to engage in preferential self-dealing that are present in this market.

In general, the Commission should use the rules adopted to implement equal access for landline services as a blueprint for its CMRS equal access rules. CMRS providers should be required to offer their customers access to their preferred long distance carrier through 1+ dialing. The Commission should reject any further arguments by wireless providers that "dial around" access to a user's preferred carrier is adequate. (Notice at ¶ 82). As with landline services, dialing parity is an essential prerequisite of fair long distance competition.

Balloting procedures should also be similar to those used for landline equal access conversion. Specifically, CMRS operators should be required to notify customers of their right to select the long distance provider that will carry their interexchange traffic, and include a list of providers that have chosen to participate in the equal access process. End users who fail to specify a long distance carrier should be allocated among IXCs in the same proportion as the IXCs that were selected by customers in the balloting process.

Finally, it is critical that the Commission take steps to enforce rules to ensure that CMRS providers offer all IXCs nondiscriminatory interconnection at rates, terms and conditions no less favorable than are available to the CMRS provider's own interexchange operations. Ongoing Commission oversight is necessary to ensure that all providers operate on a level playing field.

B. Mobile Vendors Should Not Be Allowed to Bundle Local and Long Distance Service.

The Commission also should adopt the position of the Justice Department and require wireless carriers to offer long distance service on an unbundled basis separate from their local mobile services. The Department has explained, in the context of pending BOC waiver requests, that "unbundling

requirements are necessary to ensure that presubscription provides a genuine opportunity for competing interexchange carriers." 25/ The Department notes that if a BOC "can bundle cellular and interexchange services together in blended, single-price offerings that do not permit customers the opportunity to compare the BOC's offerings with its competitors'," then equal access requirements will be insufficient. 26/

LDDS does not necessarily take the position that all wireless carriers should be subject to the same restrictions as the BOCs. Indeed, we have opposed RBOC provision of interLATA mobile services even subject to the conditions proposed by the Justice Department, which include "genuine equal access" and unbundling. In our view those "safeguards" are chimerical given the overwhelming market power still enjoyed by the RBOCs. 27/ However, to the extent that any wireless company intends to compete in the interexchange market, it at least should be subject to the unbundling rules advocated by the Justice Department. Such rules do not materially reduce the ability of wireless providers to compete in the long distance market (including, for example, their ability to offer local and long distance services at the same flat retail rate). They simply implement the customer's ability to select an IXC on an equal basis.

Unbundling also is pro-competitive because it creates a local service product that an IXC can purchase and resell in conjunction with its own long distance services, so that others besides the few facilities-based wireless vendors

25/ DOJ Memorandum at 37.

26/ Id. at 37-38.

27/ See Opposition of LDDS Communications, Inc. to Motion of the Bell Companies for a Modification of Section II of the Decree to Permit them to Provide Cellular and Other Wireless Services Across LATA Boundaries, filed in United States v. Western Elec. Co., Civ. Action No. 82-0192 (D.D.C., Aug. 8, 1994).

can compete to serve those customers who value one-stop shopping. Resale is discussed in more detail below.

C. System Conversion Should Be Phased In Over a 21 Month Period.

The Commission should permit phased-in implementation of equal access for existing CMRS systems. LDDS recommends that the Commission allow a period of 21 months for conversion of all cellular MSA systems, and any RSA cellular system or other CMRS system in which there has been a *bona fide* request for equal access. PCS providers should be required to deploy switches capable of providing equal access when they construct their facilities, so that they can offer equal access when they go into service.

This schedule should provide ample time for existing CMRS providers to perform the necessary switch enhancements and balloting procedures. McCaw, which is the nation's largest provider of cellular service, has agreed as part of the proposed consent decree related to its merger with AT&T to implement equal access for all its systems within a 21-month period. ^{28/} Clearly there is no reason why it should take any longer for smaller carriers to reconfigure their systems in order to permit them to provide equal access.

D. Service Area Definitions Should Be Consistent with the MFJ Pending Implementation of Full 1+ Presubscription.

The question of service area definition is difficult, as the Notice recognizes. As a general rule, callers should be able to have equal access to long distance carriers for all of their 1+ traffic, whether landline or wireline originated. Experience in the intraLATA market demonstrates that LECs are able to

^{28/} AT&T/McCaw Competitive Impact Statement, 59 Fed. Reg. at 44162.

completely dominate 1+ toll service by denying other vendors equal access. The Commission can expect similar problems to the extent that wireless service providers are excused from providing equal access to some portion of the 1+ market.

However, LDDS will assume that the general problem of inadequate competition in the intraLATA market is an issue that exceeds the scope of this proceeding. For present purposes, the Commission at least should adopt service area rules for CMRS equal access that are consistent with the requirements of the MFJ and current landline equal access. Specifically, local service areas should be co-extensive with existing LATA boundaries, as modified by any previous waivers permitting interLATA mobile services within specified geographic areas. If the Commission adopts LATAs as the basis for CMRS local service areas, it can avoid the need for the BOCs (or McCaw, once it converts to equal access) to make any changes in their operations. Furthermore, the Commission's interest in regulatory parity will be served because all BOC and non-BOC carriers will be subject to the same standards.

But assuming the Commission takes this course, it should still hold open opportunities for future implementation of intraLATA equal access so that customers can have competitive choice for all of their toll traffic. For example, several states are beginning to implement intraLATA presubscription, and others are considering this change. The Commission itself has raised questions concerning competition in the intraLATA market. Any action taken in this docket should be flexible enough to accommodate expansion of the equal access requirement to full 1+ presubscription for both landline and mobile services.

LDDS strongly opposes the adoption of larger "non-equal access" areas for PCS. Adoption of inconsistent standards for different CMRS providers would create regulatory inequities among competing providers, and reduce competitive choices for customers. The fact that the Commission has decided to issue some PCS

licenses for Major Trading Areas ("MTAs") does not suggest that MTAs should be the basis for determining PCS carriers' equal access obligations (any more than the size of an RBOC's franchise region should be the limit of its equal access responsibility).

In the MFJ waiver process, determinations regarding whether limited service across LATA boundaries should be permitted focus on whether the geographic area constitutes a "community of interest." To make this decision, the MFJ court has considered evidence regarding automobile traffic patterns and the existence of metropolitan complexes in an attempt to assess whether "the public benefits accruing from slight departures from the strict LATA boundaries to accommodate motorists with cellular phones were so substantial that they outweighed, on this limited basis, the dangers to fair competition." 29/

The Department of Justice has persuasively demonstrated that MTAs do not meet the community of interest test because they "reflect patterns of *commercial* activity," not the "patterns of *personal* movement on which the Court has relied." 30/ The Department concluded that "MTAs do not purport to represent areas within which people move on a daily basis." 31/

LDDS submits that LATA boundaries (supplemented by the community of interest test) provide an appropriate standard for establishing local service areas for CMRS equal access pending further implementation of full 1+ presubscription. Because that standard is reflected in existing LATA boundary waivers, the Commission should simply rely on current MFJ precedent to define local service boundaries at this time.

29/ United States v. Western Elec. Co, 673 F. Supp. 525, 552 (D.D.C. 1987).

30/ DOJ Memorandum at 47 (emphasis in original).

31/ Id. at 48 (footnote omitted).